SUBJECT: Granting medical power of attorney

COMMITTEE: Public Health: committee substitute recommended

VOTE: 8 ayes--Wright, Clemons, Madla, J. Harris, Hilderbran, McDonald, Park, Rodriguez

0 nays

1 absent--Schoolcraft

WITNESSES: For--William Broussard, Texas Conference of Catholic Health Facilities; Russell Hoverman, physician. (Registering in support but not testifying -- Jerry Chapman, Texas Health Care Association)

Against--None

DIGEST: CSHB 2098 would allow adults to delegate to another person the authority to make their medical decisions in the event that a physician certified them as incapacitated. A person could delegate this authority by signing a durable power of attorney for health care, with two witnesses. The delegated agent would have access to the incapacitated person's medical records to make medical decisions.

Power of attorney could not be given to a person's physician or other health-care provider, residential-care provider or their employees. The witnesses signing the power of attorney could not be the person's spouse, heirs, physician or other health-care provider, residential-care provider, or anyone entitled to a share of or having a claim to the person's estate.

A medical power of attorney would not be valid unless the person delegating the authority had also signed a disclosure statement, as set out in the bill, summarizing the effect and extent of granting medical power of attorney.

Treatment could not be given or withheld if the patient objected, regardless of his or her capacity to make health care decisions, and even if a binding medical power of attorney existed.

A patient's delegated agent could not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, abortion or neglect through omission of care intended to comfort the person.

A power of attorney could be revoked through written or oral notification by the person granting it or by the execution of a subsequent power of attorney. If a person's spouse were granted the medical power of attorney, divorce would revoke the document.

A guardian or a person seeking guardianship could request a probate court to suspend or revoke a medical power of attorney agreement. Unless the probate court ordered otherwise, an appointed guardian would have the sole authority to make a person's medical decisions while the probate court's decision was pending.

Also, a person's near relatives, or other directly interested parties, could file suit in district court to revoke a medical power of attorney because the person was not of sound mind or signed the agreement as a result of duress, fraud or undue influence.

Anyone with medical power of attorney could not be held liable for medical decisions made in good faith. Liability for medical costs incurred for an agent's medical decisions would be the same as if the person granting the power of attorney had made the decisions. A physician or provider of health or residential care could not be liable for medical treatment given in good faith and under due care as directed by a person with medical power of attorney.

Persons could not be charged for medical services at a different rate because a medical power of attorney had been granted. A person could not be required to grant a medical power of attorney as a condition of getting medical care or insurance benefits, nor could medical care or insurance benefits be refused because a person had granted medical power of attorney.

If a conflict arose between a medical power of attorney and a directive under the Natural Death Act, the instrument executed later in time would control.

SUPPORTERS SAY:

CSHB 2098 would allow people to exercise some control over their medical care even though they have become incapacitated. Current law recognizes the rights of the terminally ill or those near death under the Natural Death Act, enacted in 1977. However, that act does not cover persons with progressive diseases like Lou Gehrig's Disease or Alzheimer's Disease, and other incapacitating conditions such as brain injuries. With relatives, physicians and attorneys involved, the wishes of an incapacitated person may become cloudy unless one agent has been designated. This bill would avoid confusion by making medical decisions the exclusive responsibility of a surrogate appointed by the patient and who knows the patient's intentions.

The bill would protect doctors and other medical providers who often are put in the precarious position of second guessing the desires of a patient. It would also allow physicians to comply with patients' desires, as expressed by their appointed surrogates, with no fear of liability.

Numerous safeguards in the bill would protect a patient from being coerced or forced to grant medical power of attorney. No treatment could be carried out over a patient's objection, and medical power of attorney could be revoked by the patient or under a court's direction. Certain procedures such as abortion or psychosurgury that would require the personal consent of the patient would be specifically omitted from the authority of anyone else to approve.

The bill would allow allow people to be provided health care with dignity, according to their wishes as implemented by a person they trust. It does not address euthanasia; the Natural Death Act covers cases not addressed by this bill.

OPPONENTS SAY:

This bill would expand legal euthanasia to those with progressive diseases. The value of life is far more important than any so-called right to die. If we have the technology to prolong life, we should use it. Medical technology advances so quickly that we cannot take the chance of pulling the plug on a patient one day and finding a cure the next.

NOTES:

The committee substitute made several revisions, including adding a provision giving a guardian authority over a person's medical decisions pending a

probate court's decision to revoke or suspend a medical power of attorney.

The companion bill, SB 906 by Montford, was favorably reported by the Senate Jurisprudence Committee by 4-1 (Krier) on April 19.